exercised by the New York Court in dismissing the application for such injunction. And, I would observe also that the agreement in question had been made and executed in New York, the plaintiffs (defendants and respondents in the New York suit) were resident and carrying on business in New York, and suit and application had been instituted by and on the instructions of the agent of the defendants who himself had executed the agreement in 1947 in New York as agent for the defendants. No doubt also there are witnesses in New York whose evidence will be necessary, apart from that of the plaintiffs themselves. The plain and straightforward point I have to decide is whether this application for an injunction in the New York Courts constitutes a contempt or a real interference with the jurisdiction of our Courts. It is alleged in the motion that this is so because such is an obstruction of or attempt to obstruct or threat to the plaintiffs in the prosecution or conduct of Suit 686 of 1948 in our Courts.

No case or authority has been quoted to me directly in support of such a submission.

I can see nothing which would debar the defendants from instituting such suit and making such application to the New York Court in the exercise of their undoubted legal rights to do so, under the facts and circumstances I have detailed.

I agree that it may embarrass the plaintiffs, but many steps taken in a suit by a party in the alleged exercise of a legal right do embarrass the other side but I have never yet heard it suggested that such steps so taken are a contempt of Court.

There are of course different kinds of contempt and many varying facts and circumstances in which applications for committal for contempt of Court have been made and in some cases granted. But, as I have said, no cases in which the facts and circumstances are comparable with those in this application have been traced or quoted.

I would however refer to the case of *In re New Gold Coast Exploration Company*[13]. In that case the Master of the Rolls quoted with approval remarks made in *Plating Co. v. Farquharson*[14] by a very strong Court of Appeal and adopted remarks made by Cotton, L.J. in *Hunt v. Clarke*[15] which were as follows :—

"Now that I apply and adopt as the principle which ought to regulate these applications — that there should be no such application made unless the thing done is of such a nature as to require the arbitrary and summary interference of the Court in order to enable justice to be duly and properly administered without any interruption or interference, that is what we have to consider and in my opinion although as I say there is here that which is technically a contempt and may be such a contempt as to be of a serious nature, I cannot think that there is any such interference or any such fear of any such interference with the due conduct of this action or any prejudice to the Defendant who is applying here, as to justify the Court in interfering by this summary and arbitrary process."

The Master of the Rolls went on to say :—

"I think every word of that passage applies to the present case. I think that there is no ground whatever for invoking the aid of the Court on the footing of contempt and that the application must be made on that footing in order to succeed."

In that case a liquidator in a voluntary winding-up and against whom a summons for his removal had been taken out, applied for an injunction to restrain the issue of a cricular by a shareholder on the ground that the issue of such circular was a contempt of Court. The application was refused. In *In re Septimus Parsonage*[16] another winding-up case a committal order was made in respect of a circular issued but there, this was a real attempt to interfere with and mislead the Court so as to prevent a compulsory winding-up order.

Applying these principles and I do not wish to be interpreted as thinking or saying that there has even been any technical contempt by the defendants in instituting the New York proceedings, I have no hesitation in dismissing this application, with costs.

Application dismissed.

SINGAPORE HARBOUR BOARD v. THE OWNERS & OTHER PERSONS INTERESTED IN THE VESSEL *GYOSHIN MARU.*

[Orig. Civ. Juris. (Gordon-Smith, J.) March 28, 1949]

[Singapore — Admirality Suit No. 4 of 1948]

Custodian of Property Proclamation — Custodian of Property (Vesting) Ordinance No. 3 of 1947, s. 3 — Action in rem against ship — Ownership of ship — Registration of ship.

This was an application by the Public Trustee to set aside a writ of Summons against the s.s. Gyoshin Maru on the ground that the vessel was vested in His Majesty. It appeared that the ship was captured by the Japanese in or about 1941 in Hong Kong and when Malaya was re-occupied in 1945 the ship was being used here by the Japanese Military Authorities and was surrendered to the British Occupation Forces. It was taken into custody by the Ministry of Transport as agent for and on behalf of His Majesty and as agent for the Custodian of Property on behalf of His Majesty. Subsequently the Custodian chartered the ship to an individual who gave instructions to the Singapore Harbour Board to carry out the necessary repairs and works which were the subject matter of the claim. The vessel was registered at Singapore as being in the ownership of His Majesty represented by the Ministry of Transport in London.

Held, (1) that on the evidence there was nothing to show who was the owner of the ship; (2) that under the Custodian of Property Proclamation, the Public Trustee had the custody of the vessel but there was no

vesting in him of any property in the ship; (3) that no sure inference as to ownership could be drawn from the fact that the ship was registered as being in the ownership of His Majesty represented by the Ministry of Transport in London; (4) that therefore the motion must fail and the action should be allowed to proceed to judgment, such action being against the ship itself.

Case referred to:—

(1) *The Mogileff* (1922) P. 122.

MOTION.

W. G. Alcock (Public Trustee) for the plaintiff.

L. A. J. Smith for the defendants.

The facts and arguments appear sufficiently from the judgment.

Cur. Adv. Vult.

Gordon-Smith, J.: — This application was, originally by summons taken out by the Public Trustee in the above suit, praying that the writ of summons or the service thereof on the applicant be set aside, on the ground that the vessel s.s. *Gyoshin Maru* was vested in His Majesty.

The writ of summons was issued on the 14th October, 1948, the claim being for $15,946.03, of which $14,549.23 was for repairs executed to the ship, $1,182.30 for towage services and $214.50 for electric current and cable connections etc. all carried out by the Singapore Harbour Board.

The writ was served on the ship within the Harbour limits and it appears as if a copy must have also been served on the Public Trustee as a conditional appearance was entered by him and he then took out this summons. At the hearing, no order was made as the application should have been by way of Motion. In due course, such motion was filed and is in the same terms as the summons and came on for hearing before me on the 15th November, the argument and submissions being concluded on the 14th March. I understand that the Public Trustee has undertaken to pay the amount of the claim in any event, so that the matter is really one of giving a ruling on the submissions made.

The action is one *in rem* i.e. against the ship itself, it being uncertain who the actual owners are, or were. According to the affidavit of the Public Trustee of the 21st October, 1948, the ship was captured at Hong Kong by the Japanese in or about 1941 and when Malaya was re-occupied in 1945, the ship was being used here by the Japanese Military authorities and was surrendered to the British Occupation Forces. Apparently it was taken into custody by the Ministry of Transport as agent for and on behalf of His Majesty and as agent for the Custodian of Property on behalf of His Majesty. Subsequently, so I understand, the Custodian (or his successor) chartered the ship to some individual who gave the instructions to the plaintiffs to carry out the necessary repairs and works which are the subject matter of the claim. I understand also that in default of payment for such repairs judgment was obtained against this individual but such judgment has proved fruitless. Hence the present action *in rem*.

It is also to be noted that neither the arrest nor the attachment of the ship has been or is being sought. There is a certificate in the file by the Registrar of Shipping here that the ship is registered at Singapore as being in the ownership of His Majesty represented by the Minister of Transport in London.

The above are the facts either on record or as disclosed in argument and are not in dispute.

The Public Trustee applies to have the writ of summons and all subsequent proceedings set aside on the grounds that the vessel *Gyoshin Maru* is vested in His Majesty.

He bases this contention on the grounds that custody of the ship was vested in the Custodian by B.M.A. Proclamation No. 14 of 2nd November, 1945 and that by section 3 of the Custodian of Property (Vesting) Ordinance No. 3 of 1947 such custody was transferred to him as being the Public Trustee of the Colony. An action *in rem*, whatever the relief claimed, is a writ directed against the property in the ship. It compels the owner either to appear and submit to the jurisdiction or to allow judgment against his property to go by default. On the evidence contained in the affidavits filed there is nothing to shew who is the owner of the ship, enemy or otherwise, and it has never been condemned as a prize.

I agree that the mere custody is vested in the Public Trustee but is this sufficient to constitute "ownership". I do not think so. He merely has the custody and powers as set out in sections 6, 7 and 8 of the Proclamation and there is no vesting in him of such property.

As regards the registration of the ship as being in the ownership of His Majesty represented by the Minister of Transport, in the case of *The Mogileff*[1] Hill, J. went into a similar case of registration at considerable length and stated at page 129:—

"But the fact that ships foreign owned were registered under section 80 (of the Merchant Shipping Act 1906) and the Order in Council shows that no sure inference as to ownership can be drawn from the statement in the register. I can draw no certain inference from the register as to the Crown's ownership, whether legal or otherwise. Nothing outside the register makes

me draw any such inference. On the contrary, if I consider anything outside, my doubts are only strengthened."

That case was one of Interpleader and it was held that the Crown could not be made a party to an interpleader issue but that while the question whether the ship was the property of the Crown or the judgment debtors remained undetermined the Sheriff would not be ordered to withdraw from the execution.

This case seems to be relevant and I can see no reason why the action should not proceed to judgment, such action being against the ship itself.

In my opinion the motion fails and should be dismissed but I make no order as to costs.

Motion dismissed.

SOON SIONG POH v. YEO SIEW LAM AND ANOTHER.

[Orig. Civ. Juris. (Taylor, J.) May 27, 1949]

[Singapore — Civ. Suit No. 596 of 1948]

Control of Rent Ordinance, 1947, ss. 14 and 15 — Subletting not prohibited but excessive rents received — Discretion of Court.

Taylor, J. in this case held that a tenant who is not prohibited from subletting but receives from his sub-tenants rents exceeding three-quarters of the rent paid by him is liable to be ejected at the discretion of the Court but where he has incurred substantial expenditure for repairs the Court may postpone the operation of the Order so as to spread the cost of repairs over a reasonable period.

Case referred to:—

(1) *Chen Chi Ya v. K. Nagappan,* (1949) M.L.J. 164.

ACTION.

N. A. Mallal for the plaintiff.

Chong Thutt Pitt for the defendants.

The facts and arguments appear sufficiently from the judgment.

Cur. Adv. Vult.

Taylor, J. : — This is an action for possession of house No. 101 Jervois Road. The plaintiff is the owner. The defendants are in occupation of part of the house and claim to be protected tenants.

The history of the matter begins in 1946. The house had suffered war damage and was let to one Ng Say Kiong, from 1st November, 1946, on the footing that the tenant would undertake essential repairs. There was no written agreement and no stipulation against assignment or subletting. On 5th October, 1946, Ng Say Kiong entered into a written agreement with two other persons to share the house. The agreed translation of this instrument reads, so far as material, as follows :—

"Whereas the two defendants and Ng Say Kiong have jointly rented No. 101 Jervois Road at $100 per month it is agreed that they are to pay $40, $40 and $20, respectively; the light and water bills shall be shared equally; the cost of repairs, $1,500, shall also be shared equally."

The three parties moved in with their families. The house was not divided into three self contained flats and they did not live together as a joint household. The living rooms were separately appropriated and food was bought and cooked in three separate lots; they all used the kitchen, the garden and probably the entrance hall and stairs, in common.

There was a garage with two rooms over it which were undamaged. These were separately sublet by Ng Say Kiong from 3rd November, 1946, at $25 per month to one Koh Huan Choo, who was still living there at the date of the trial. He is not a party. He was subpœnaed by both sides and was called for the plaintiff. He seemed to me a reliable witness.

In or about June 1947, Ng Say Kiong went to China, taking his family with him, and a friend of his, Ong Kim Seng, took over his share of the house and is still there, paying, he says, $20 per month, subject to an oral undertaking to vacate if and when Ng Say Kiong should return to Singapore and wish to resume occupation.

Ng Say Kiong has no intention to return at any date which can be even roughly indicated. In fact he is seeking merely to retain a kind of contingent free option to return, in case he might wish to do so.

The plaintiff purchased the house in June 1948, not as an investment but intending to occupy it with his family. He inspected it on several occasions but may not have discovered all the facts. He knew from his vendors that the house was let to Ng Say Kiong and he was informed that the tenancy agreement contained a clause against subletting but this was a mistake; in fact there never was any such clause.

Notice of the sale was given to the occupiers and on 2nd July, 1948, the first defendant and Ong Kim Seng saw the plaintiff at his place of business. They said that Ng Say Kiong was a sea-faring man and was away from Singapore and they tendered the rent on his behalf. The plaintiff accepted the rent and gave them a receipt in the name of Ng Say Kiong with an endorsement prohibiting subletting.